

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 20, 2010

In the Matter of WYGANT/GUERNSEY, Minors.

No. 295256

Branch Circuit Court

Family Division

LC No. 08-003976-NA

Before: HOEKSTRA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

Respondent A. Guernsey (respondent)¹ appeals by right the circuit court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

We reject respondent's argument that the circuit court erred by finding that the statutory grounds for termination had been established by clear and convincing evidence. The children were removed from respondent's care because there was evidence that respondent was either unable or unwilling to protect the children from a potential sexual predator, namely respondent's boyfriend. Respondent demonstrated continuously throughout these proceedings that if protecting the children meant separating from her boyfriend, she would not protect the children. She continued her relationship with the boyfriend even while a criminal investigation of the allegations of sexual abuse was underway. Respondent then continued to have contact with her boyfriend even after she acknowledged his drug involvement and despite the fact that he was apparently arrested in her apartment on the night that police seized drug paraphernalia there. Further, respondent had a child with her boyfriend while the action was pending before the circuit court with regard to the two older children, and she attempted to conceal the relationship by lying to the court, the foster care caseworker, and the child protective services officer. Although it would have been relatively simple for respondent to demonstrate her concern for the children's wellbeing by discontinuing her contact with the boyfriend, respondent wholly failed to do so. Respondent's actions in this regard were strong evidence of her careless and indifferent attitude toward the safety of her children.

¹ Because only respondent A. Guernsey has appealed, our use of the word "respondent" refers only to her.

Moreover, we reject respondent's argument that because her boyfriend was never criminally convicted of the alleged sexual assault, no risk of harm was posed by his continued contact with the children. As the circuit court accurately noted, the question was not whether the boyfriend was convicted of the alleged abuse, but whether respondent was willing and able to protect her children from the risk of harm. Respondent demonstrated through her actions that she was not.

Lastly, we cannot omit mention of the other significant barriers to reunification that became apparent while the case was pending before the circuit court. Specifically, respondent lacked housing and income, and had substance abuse and mental health issues as well. Respondent failed to rectify these additional concerns at any time during the pendency of these proceedings. Indeed, at the time of termination, respondent continued to lack housing and income, and had not adequately addressed her substance abuse and mental health problems.

In sum, the evidence established that the conditions leading to adjudication continued to exist at the time of termination, that respondent remained unable to provide proper care and custody for the children, that there was no reasonable likelihood that she would be able to do so within the foreseeable future, and that placing the children in her care would subject them to a genuine risk of harm. We therefore cannot conclude that the circuit court clearly erred by finding that §§ 19b(3)(c)(i), (c)(ii), (g), and (j) had been proven by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

For the same reasons, we also reject respondent's argument that the circuit court clearly erred by determining that termination was in the best interests of the children. MCL 712A.19b(5). We reiterate that respondent failed to take steps to show that she was ready and able to provide proper care and custody for the children. Moreover, returning the children to respondent would have subjected them to a risk of physical harm. We perceive no clear error in the circuit court's best-interests determination. MCR 3.977(J); *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Jane M. Beckering